

Amendment No. 1 to HB1256

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Signature of Sponsor

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Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1363\***

**House Bill No. 1256**

By deleting all language following the enacting clause and by substituting instead the following language:

SECTION 1. This act shall be known and may be cited as the "Tennessee Voter Confidence Act".

SECTION 2. Tennessee Code Annotated, Section 2-1-104, is amended by adding the following definitions, appropriately numbered:

(\_) "Accessible voting system" means a voting system that enables all voters, including voters with disabilities, to complete all steps of the voting process in a manner that maintains the privacy of the voter's ballot, including:

(A) Marking the voter's selections on the voter-verified paper ballot;

(B) Verifying that the voter-verified paper ballot record of the voter's vote accurately reflects the voter's intent; and

(C) Casting the voter's marked voter-verified paper ballot.

Such a voting system shall enable voters with disabilities to vote without assistance to the extent possible consistent with the voter's disability;

(\_) "Ballot Marking Device" means a voting device that enables voters with disabilities including voters who are blind or visually-impaired to mark and verify an optical scan voter-verified paper ballot as correctly reflecting the voter's intent. Such a device may employ similar assistive interfaces, including but not limited to, touch screens with adjustable font sizes, audio interfaces with support for multiple languages, sip-and-puff interfaces for voters who do not have use of their hands, or keypads with tactilely-distinct buttons.

A “ballot marking device” is one which is:

- (A) Used only to assist voters in marking and verifying a paper ballot,
- (B) Capable of alerting a voter of overvoting,
- (C) Capable of alerting the voter if the voter has undervoted in any contest or question,
- (D) Permits the voter to correct any error before marking and completing the paper ballot, and
- (E) Enables the voter to verify that the marked paper ballot correctly reflects the voter’s intent.

(\_) “Ballot privacy container” means an opaque cover, envelope, sleeve, or other device that is used in conjunction with a voter-verified paper ballot marked either by the voter or with the assistance of a ballot marking device to maintain the privacy of such a ballot so that the ballot is not visible between the time that it is marked and the time when the voter’s ballot is inserted in the precinct-based optical scanner;

(\_) “Precinct-based optical scanner” means an optical ballot scanner that is located in the precinct and into which optical scan voter-verified paper ballots, marked either by hand by the voter or with the assistance of a ballot marking device, are inserted to count the voter verified paper ballot;

(\_) “Top race” means the presidential race, if the presidential race is on the ballot; the governor’s race, if the governor’s race is on the ballot; and in addition to such races, if other races are on the ballot, the race which receives the most votes as determined by the unofficial machine vote count for each political subdivision election held and on the ballot;

(\_) “Voting system” means a precinct-based optical scanner;

(\_) “Voter-verified paper ballot” means a permanent, individual paper ballot that is marked either manually by the voter or with the assistance of a ballot marking device and verified by the voter as correctly reflecting the voter’s intent, before the voter’s vote is counted by the precinct-based optical scanner;

SECTION 3. Tennessee Code Annotated, Title 2, is amended by adding the following language as a new, appropriately designated chapter thereto:

§ 2-\_\_- 101

(a)

(1) Notwithstanding any other provision of state law to the contrary and consistent with federal law, after the effective date of this act any voting system purchased or leased with federal, state or local funds shall be a system using precinct-based optical scanners; provided however, that if a county is still using DRE machines for any election prior to or in November 2008 such county may lease identical DRE machines instead of precinct-based optical scanners.

(2) Each precinct-based optical scanner shall be programmed to alert the voter if the voter's ballot is overvoted, and in such cases give the voter the opportunity to retrieve the marked ballot from the scanner before it is counted in order for the voter to secure a new voter-verified paper ballot for correct marking by the voter or with the assistance of a ballot marking device.

(3) The scanner shall accept and tabulate only ballots which are free of any overvotes, and deposit the ballot into a secure storage container immediately after being scanned to be preserved as the official ballot of the voter and for subsequent audit or recount.

(b) The precinct-based optical scanner voting system shall not preserve the individual voter-verified paper ballots in any manner that makes it possible to associate a voter with the record of the voter's vote.

(c)

(1) Each county shall use a precinct-based optical scanner voting system on or before the November 2010 general election.

(2) It is the intent of the general assembly that in the purchase of such voting systems the state of Tennessee comply in all respects with federal law.

§ 2-\_\_- 102

(a) The voter-verified paper ballot produced in accordance with § 2-\_\_\_- 101 shall be preserved as follows:

(1) In the case of votes cast at the polling place on the date of the election, within the polling place in the manner or method in which all other voter-verified paper ballots are preserved within such polling place;

(2) In the case of votes cast at the polling place prior to the date of the election or cast by mail, in a manner which is consistent with the manner employed by the jurisdiction for preserving such ballots in general; or

(3) In the absence of either such manner or method, in a manner which is consistent with the manner employed by the jurisdiction for preserving voter-verified paper ballots in general.

(b) The size of the print of the voter-verified paper ballot shall be not less than ten (10) points as required by § 2-5-207(b), and be made of paper suitable for a manual audit or recount.

(c) The voter-verified paper ballots produced in accordance with § 2-\_\_\_- 101 shall be the true and correct record of the votes cast and shall be the official ballot of record for all purposes.

(d) All unused voter-verified paper ballots shall be securely stored at the polling location.

#### § 2-\_\_\_- 103

(a) The voting system, including any procedures employed by poll workers to facilitate voting by voters with disabilities, shall:

(1) Satisfy the requirements of § 2-\_-101 by the use of at least one accessible voting system equipped for individuals with disabilities at each polling place; and

(2) Allow the voter the opportunity to complete any of the steps of the voting process in a manner that maintains the privacy of the voter's ballot.

(b) A ballot marking device utilized in the accessible voting system shall in no way maintain an electronic record of the voter's vote nor count the vote of the person using the device. A voter-verified paper ballot created by a ballot marking device is not considered cast until it is either deposited into a ballot box or accepted by a precinct-based optical scan vote tabulator.

(c) Each voter shall be provided with a ballot privacy container to ensure that the privacy of the voter's ballot is maintained from the time it is marked either manually by the voter or with the assistance of a ballot marking device until the time that the ballot is placed into the precinct-based optical scanner.

§ 2-\_\_\_- 104

(a) For each election, each county election commission shall conduct mandatory hand count audits of the voter-verified paper ballots of at least the top race in the federal, state, county or municipal election, if on the ballot, which hand count audits shall include three percent (3%) of the votes cast prior to the election for the races to be audited, and also be conducted in at least three percent (3%) of the precincts, comprising at least three percent (3%) of voters in the election, as follows:

(1) The selection of the precincts in a county in which the county election commission shall conduct hand count audits of the voter-verified paper ballots as specified in this section shall be made public by the county election commission on an entirely random basis using a uniform distribution in which all precincts in a county have an equal chance of being selected. The timing of such random selection shall take place in the manner specified in subsection (a)(2).

(2) As soon as practical, following the closing of the polls, the county election commission shall:

(A) Complete the initial vote count for each and every precinct participating in the election in that county and publicly announce the unofficial results of each such initial vote count as soon as such results are available;

(B) Publicly conduct a random drawing as specified by this section to determine which precincts will be selected for the mandatory hand count audits of the voter-verified paper ballots and which race or races will be selected, provided such drawing shall not occur until such time as all such initial vote counts have been completed and the unofficial results publicly announced, but no later than forty-eight (48) hours after that time;

(C) Publicly announce the date, time, and location of such public random drawing at least twenty-four (24) hours before such drawing is conducted;

(D) Publicly announce the date, time, and location of such public mandatory hand count audits at least twenty-four (24) hours before such hand count audits are initiated;

(E) Initiate such mandatory hand count audits of the voter-verified paper ballots of the top race and any other race, if additional races are selected for audit by the county election commission, in the precincts selected when all ballots, including provisional ballots, have been counted but no later than forty-eight (48) hours after the unofficial results of the election are announced; and

(F) Complete such hand count audits no later than twenty-four (24) hours after such hand count audits are initiated and publicly announce the results of each such mandatory precinct hand-count audit as soon as it is available.

(3)

(A) If the county election commission finds as a result of its hand count audit that there is a variance of less than one percent (1%) between the voter-verified paper ballots counted for any race included in the hand count audit and the initial unofficial machine vote count in any of the

precincts selected for the random audit, the election shall be certified for that race and no additional hand count audit shall be required for that race.

(B) If, pursuant to subdivision (A), the variance is more than one percent (1%) between the hand count audit and the unofficial machine vote count for any race, the county election commission shall conduct hand count audits in the manner provided in this section at an additional three (3) or more percent of precincts, as the county election commission considers appropriate, within the county for the same races audited under subdivision (A) where the variance was more than one percent (1%), to resolve any concerns and ensure the accuracy of the results for certification.

(C) If the variance in the audits conducted pursuant to subdivision (B) is more than one percent (1%) between the hand count audit and the unofficial machine vote count, the county election commission is authorized to conduct a hand count audit in as many precincts as the commission considers appropriate, to resolve any concerns and ensure the accuracy of the results for certification.

(D) Pursuant to subsection (b), following such hand count audits and the announcement of the results and the availability of such results, the election shall be certified and the election results published. If an election contest is filed pursuant to title 2, chapter 17, part 1, the results of such hand count audits shall be considered by any court, primary board, legislative body or tribunal having jurisdiction of an election contest to determine whether a recount is warranted in accordance with § 2-17-117.

(b) As soon as practicable after the completion of a hand count audit conducted under this section, the county election commission shall publicly announce and make available the results of the audit, and shall include in the announcement a comparison of

the results of the election in the precinct as determined by the county election commission under the hand count audit and the initial voting system count in the precincts as previously announced by the county election commission.

(c) No county may certify the results of any election which is subject to an audit under this section prior to the completion of the hand count audit and the announcement and the availability of the results of the hand count audit.

(d) A county election commission shall implement the process for mandatory random hand count audits no later than the general election in 2010, or as soon as a precinct-based optical scan voting system is available in the county.

§ 2-\_\_- 105

(a) All electronic voting systems in use on or after the effective date of this act:

(1) Shall be certified pursuant to § 2-9-110 and shall have been certified by the election assistance commission as having met the applicable voluntary voting systems guidelines; in addition the precinct-based optical scanners shall be tested to ensure the scanners operate in accordance with such guidelines; and

(2) Shall, with all relevant documentation, be made available by their vendors, at the request of the state election commission or the secretary of state for review by an independent expert, selected by the state election commission or the secretary of state, to ensure the functionality and security of its systems.

The state coordinator of elections shall enact necessary rules and regulations to require that all required tests are properly conducted on the precinct-based optical scanners as well as requiring a sufficient review is conducted of the voting systems and the relevant documentation to ensure compliance with this subsection.

(b) Prior to each election, all electronic voting equipment purchased, leased or used by the county election commissions shall be subject to acceptance testing by such commission in accordance with rules and regulations promulgated by the state coordinator of elections.



(c) With respect to precinct-based optical scanner voting systems purchased or leased pursuant to this act, vendors shall provide access to all information required pursuant to subsection (a) and rules and regulations promulgated pursuant to such subsection, which shall be placed in escrow with the state election commission or an agent designated by the secretary of state. The following persons shall be permitted access to the escrowed materials: the state coordinator of elections and any county election officials designated by the state coordinator of elections prior to all elections. All source codes for software and firmware used in the setup, test or operation of such voting system, except for commercial off-the-shelf software for which only the object code is subject to this provision, shall be placed in escrow by its vendor.

(d) With respect to any programmable electronic voting system purchased after the effective date of this act:

(1) An authorized officer of the vendor, and manufacturer if different, shall sign a binding oath certifying that all machines provided by that vendor to be used in an election in Tennessee contain object programs derived directly and only from the escrowed source software except for commercial-off-the-shelf software excluded pursuant to subsection (c);

(2) The escrowed software may be examined by an independent expert, or experts, appointed by the secretary of state upon reasonable, substantiated challenge supported by an order for such examination by a Tennessee court;

(3) A publishable list of the versions, release and patch levels and their dates for each software component shall accompany the software to be escrowed as well as each system delivered and each software patch, update or upgrade applied to any such system; and

(4) The versions, release levels and their dates for each software component loaded on an electronic voting machine shall be directly accessible and verifiable by local election officials or their designated agents from the setup, initialization and operating programs of each system.

(e) No electronic voting equipment used in an election in Tennessee shall have any capability, enabled or disabled, for wireless communication of any sort.

(f) Election officials and administrators, not vendors, shall be responsible for and shall control the administration and use of voting equipment in any federal, state or local election in Tennessee.

(g) Electronic voting system vendors shall provide the ballot definition software to each county election commission in a format which will ensure that the source code is not accessible and cannot be modified.

§ 2-\_\_\_ - 106

(a) The statewide voter registration list shall meet all requirements of the HAVA Act of 2002, as amended.

(b) The state coordinator of elections shall be responsible for maintaining and updating this list.

(c) At least once during each calendar year, one percent (1%) of this list shall be audited to ensure accuracy.

SECTION 4. Tennessee Code Annotated, Section 2-17-105, is amended by deleting the language “within ten (10) days after the election” and substituting instead the language “within five (5) days after certification of the election”.

SECTION 5. Tennessee Code Annotated, Section 2-8-101(a), is amended by deleting the language “The county election commission shall meet at its office on the first Monday after an election or upon completion of its duties under § 2-8-104, but no later than the second Monday after the election” and substituting instead the language “The county election commission shall meet at its office upon completion of its duties under § 2-8-104, but no later than the third Monday after the election”.

SECTION 6. The secretary of state and the state election commission are authorized, with the various county election commissions, to implement the provisions of this act for any new voting systems purchased or leased after the effective date of this act in accordance with § 2-\_\_\_-101(a)(1). In addition, they are authorized to expedite the replacement or modification of

any systems that are not in compliance with this act as soon as practical, but no later than the general election of 2010. Federal "Help America Vote Act" (HAVA) funds previously allocated, any similar funds allocated in the future, or any state or county funds are to be used to the extent available, eligible and appropriated.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.